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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/811,711 | 03/29/2004 | Thomas K. Albanito | 04-106-A | 1442 |

7590 12/17/2004
Lesavich High-Tech Law Group, P.C.
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Chicago, IL 60603

EXAMINER

HAYES, BRET C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3644

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,711

Applicant(s)

ALBANITO ET AL.

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

2. The disclosure is objected to because of the following informalities: page 9, line 10, "carabineer" should be --carabiner-- or --karabiner--, as a carabineer, also carabinier or carbineer, is a soldier armed with a carbine, and a carabiner or karabiner is an oblong metal ring with a spring clip, used in mountaineering to attach a running rope to a piton or similar device (and much closer to a "mechanism" as recited. The word processing program used by the Patent Office indicates the spelling "carabiner" to be wrong as well (with a red squiggly line underlining it) and suggests "carabineer" as the first choice replacement, which is probably how the typographical error occurred, and "karabiner" as the second choice replacement, which would have been more correct in this case. Also please note, examiner did not bother to log any and all occurrences of the word throughout the specification—only the one.

Appropriate correction is NOT required—merely suggested.

Claim Objections

3. Claims 2, 4, 16 and 18 are objected to because of the following informalities: claims 2 and 16, line 3 of each, “carabineer” should be --carabiner-- or --karabiner-- see above regarding the same—for claim language purposes, the appropriate spelling of the word should be used, however, as with any claim objection, Applicants are free to argue against it; and claims 4 and 18, line 2 of each, insert a comma --,-- after “an optical switch”, and line 3 of each, and less critically, insert --a-- before “Bluetooth switch”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 – 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Re – claims 1, 13 – 15 and 29 – 31, lines 6, 3, 3, 7, 3, 3 and 7 of each claim, respectively, the recitation of another “an intermittent movement” is unclear as a first recitation of “an intermittent movement” occurs previously, either in the claim itself or in the base claim. If this is intended to be a second intermittent movement, examiner suggests wording the movements as such. If this is intended to be the same intermittent movement as previously recited, examiner suggests using --the intermittent movement-- after all initial recitations, for clarity.

7. Re – claims 13, 14, 29 and 30, lines 2 of each, the recitation of another “an intermittent operation” is unclear as a first recitation of “an intermittent operation” occurs previously in the base claim. See above suggestions regarding “movement”.

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8. Further, re – claim 15, at line 4 of the claim, the recitation of another “an electronic circuit board” is unclear as outlined above regarding “movement” and “operation”. See above suggestions regarding “movement” and “operation”. Further still, claim 15, lines 11, 16 and 17 (3X), recites the limitation “the electronic circuit board”. There is insufficient antecedent basis for this limitation in the claim as the possibility exists for there to be two separate electronic circuit boards, and the one being referenced cannot be clearly determined.

9. Claim 28 recites the limitation “the plurality of heat absorbing filaments” in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

10. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Allowable Subject Matter

11. Claims 1, 15 and 31 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

12. Claims 2 – 14 and 16 – 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record discloses vibrating fishing lures comprising a hooking means, an electronic circuit board with a pre-programmed microprocessor and a vibrator effecting movement of a lure body component, a power source, and an on-off switch. However, the prior art does not disclose nor fairly teach a containment component having the electronic circuit board, a first portion of the hooking means, the power source and the on-off switch in an internal waterproof portion, and

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wherein the containment component is adhered to and contained within the lure body component.

14. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

12/11/04



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER